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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 30th September, 2024*
+ **CRL.L.P. 22/2019 & CRL.M.A. 398/2019**

SHAKUNTALA DEVIPetitioner
Through: Adv. Manika Tripathy,
DHCLSC & Adv. Barun
Dey,
versus
STATE & ANRRespondents
Through: Mr. Rajkumar, APP for
the State.
Mr. Roshan Lal Saini,
Adv. for R-2 through V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed seeking leave to appeal against the order dated 07.04.2018 (hereafter 'impugned order') passed by the learned Metropolitan Magistrate ('MM'), Tis Hazari Courts, Delhi in Case No. 511850/2016 titled *Smt. Shakuntla vs. Pushkar & Ors.*

2. By impugned order, the learned MM acquitted Respondent Nos. 2-4. The case was instituted on a complaint given by the petitioner alleging that on 19.05.2008, at around 7:00 am, Respondent Nos. 2-4 forcibly entered the house of the petitioner, and caught hold of her. It is alleged that Respondent No. 2 was having a *danda* in his hand which he allegedly used to hit the petitioner on her head. It is alleged that Respondent No. 3 bit the petitioner, and Respondent No. 4 gave fist and kick blows to the petitioner. It is the petitioner's case that Respondent Nos. 2-4 held a grudge against her since she had made a complaint against

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them to the electricity department.

3. Subsequently, a notice under Section 251 of the Code of Criminal Procedure, 1973 ('CrPC') was served upon Respondent Nos. 2-4 for offences under Sections 452/323/34 of the Indian Penal Code, 1860 ('IPC').

4. The petitioner, in her evidence, examined herself and repeated the facts of the complaint. The learned MM noted that the petitioner in her statement had deposed that Respondent Nos. 2-4 had ill will towards the petitioner since she had lodged some complaints of electricity theft against the accused persons. It was noted that during her cross examination, at the stage of post-charge evidence, a question was put to the petitioner that her brother on one occasion had assaulted Respondent No. 2 with a knife. It was noted that in place of tendering her response to the said question, the petitioner evaded the question stating that the same was a personal matter and she was not willing to disclose the details before the Court. The learned MM noted that the relations between the accused persons and the petitioner appeared to be strained from the record thereby noting that the probability of false implication owing to previous enmity could not be ruled out.

5. The learned MM further noted that in accordance with the statement of the petitioner, the incident happened at about 7:00 am at her residence situated at Mukeempura, Subzi Mandi, Delhi, however, the MLC recorded indicated that the petitioner reached the hospital only at 9:20 am. The learned MM further took judicial notice of the fact that the said Bara Hindu Rao Hospital

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was situated at a walkable distance of maximum 10 minutes from any place in Mukeempura. It was noted that the delay between 7:00 am to 9:20 am remained unexplained especially when the petitioner had suffered severe injuries.

6. The learned MM, noting that neither any public witness had been examined nor the delay of more than 2 hours in reaching the hospital was explained, observed that the possibility of false implication out of ulterior motive could not be ruled out. Accordingly, the learned MM acquitted Respondent Nos. 2-4. Aggrieved by the same, the petitioner has filed the present petition.

7. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of *Maharashtra v. Sujay Mangesh Poyarekar*: (2008) 9 SCC 475 held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a *prima facie* case has been made out or arguable points



have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted."

(emphasis supplied)

8. In the present case, while the petitioner made certain allegations against Respondent Nos. 2-4, the same were not corroborated by any independent witness. The learned MM noted that the witness had failed to pass the test of being a sterling witness, and the case was highly doubtful.

9. It was noted that while the incident took place at 7:00 am at the residence of the petitioner at Mukeempura, Subzi Mundi Delhi, the petitioner only reached the hospital at 9:20 am, despite the fact that the hospital was situated merely at a distance of 5-10 minutes, and despite the fact that the petitioner had received severe injuries.

10. The learned MM also took into consideration the deposition of DW3 that an altercation had taken place between Respondent No. 3, and the petitioner on 19.05.2008. DW3, in his deposition, stated that they made a PCR call, however, by the time the police arrived, the petitioner had run away from the spot. DW3 further stated that they were taken to the police station, and considering that Respondent No. 3 had suffered some abrasions, she too was shifted to Hindu Rao Hospital where

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the petitioner was already present. DW3 had made an allegation that the injuries caused to the petitioner were self-inflicted. The learned MM noted that nothing had been suggested to DW3 to establish that the petitioner had not run away or that the injuries caused to the petitioner were not self-inflicted. The learned MM further noted that while the petitioner claimed that Respondent No. 3 had bitten her, the same was not medically supported. This is because the doctor merely recorded the injury as an abrasion whereas an injury caused by a tooth bite is easily discernible. It was noted that the medical document further falsified the claim of the petitioner.

11. The learned MM further noted that the petitioner resided in a densely populated area, and the incident happened at around 7:00 am and the non-joining of any public person as witness caste a doubt on the credibility of the case of the petitioner.

12. It is pertinent to mention that the decision of acquittal fortifies the presumption of innocence of the accused persons, and the Court must interfere with an order of acquittal only when there are compelling reasons to do so. In the present case, the case of the petitioner has not been corroborated by any public witness. While it is true that a conviction may be effected on the sole testimony of the eye-witness, however, in such cases the testimony of such witness must be without any blemish. In the present case, however, as was noted by the learned MM, admittedly the petitioner had previous enmity with the accused persons. Further, despite the hospital being situated at a distance of merely 10 minutes from the place of the petitioner, there is no

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explanation why it took more than two hours for the petitioner to reach the hospital. The absence of any public witness further creates a doubt in the story of the prosecution. In the light of the aforesaid, the learned MM rightly noted that the possibility of false implication on the basis of ulterior motive could not be ruled out, and the case was highly doubtful.

13. Upon a consideration of the facts and circumstances of the case, this Court does not find any ground to interfere with the impugned order and the same cannot be faulted with.

14. The present petition is accordingly dismissed. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 30, 2024

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